

'Land belongs to the community'

Demystifying the 'global land grab' in
Southern Sudan

Overview

- Context
- Ambiguity of the post-CPA legal framework
- ‘Land belongs to the community’
- Investment projects
- Concluding thoughts

Context

- Geography
 - Large and sparsely populated region.
- People
 - Some 65 ethnic groups whose territories span the entire region. No terra nullius.
- Conflict
 - 22-year civil war brought to an end by the 2005 Comprehensive Peace Agreement (CPA).
- Livelihoods
 - High levels of poverty and food insecurity.

Context cont'd

- The way forward

- Referendum held in January 2011.
- Formal declaration of independence on July 9, 2011.
- A number of post-referendum arrangements outstanding.
- North-South relations still extremely tense. High levels of South-South violence too. Real risk of renewed war.

- Private-sector response

- ‘Chilling effect,’ agreements may be in place, but no visible investment activity.
- Uncertainty also encouraging speculative investments.

Legal framework

- Three key pieces of legislation in 2009:
 - Land Act
 - Local Government Act
 - Investment Promotion Act
- Relevant provisions
 - Customary land rights = freehold and leasehold rights
 - Foreigners can't own land, can get long-term leases
 - Agricultural investments, up to 30-years renewable
 - Forestry investments, up to 60-years renewable
 - Prior consultation with affected communities
 - Prior ESIA's

‘Land belongs to the community’

- Greater normative influence than law or policy
- Origins in liberation struggle
- Key part of CPA negotiations
- Creating problems for post-conflict reconstruction efforts
- Efforts to reign in community land ownership
- Draft Land Policy (Feb. 2011)
 - Access to land as a ‘social right’
 - Identifies ‘land grabbing’ as a problem
 - Ownership vested in communities
 - Not law yet, but shows continued support for community land ownership

State	Project Proponents	Nationality	Business Sector	Area (ha)	Land-owner	Lease Period	Stage	Date Started
CES	CEDASS	Canadian	Agriculture	12,200	Gov't	No lease	Operational	2009
	Central Equatoria Teak	British, Finnish	Forestry	51,850	Gov't, Comm.	32	Finalized	2007
	Green Resources	Norwegian	Forestry, Carbon credit, Conservation	179,000	Comm.	99	Last stages	2007
	Madhvani Group	Ugandan	Agriculture	TBD	Gov't	TBD	MOU	2007
	Nile Trading	American	Biofuels, Carbon credit	1 million	Comm.	49	Finalized	2008
WES	Blue Lakes Limited	Kenyan	Forestry	560	Gov't	30	Finalized	2008
	Equatoria Teak	British, Finnish	Forestry	18,600	Gov't	32	Finalized	2007
	Eyat	N. Sudanese	Agriculture	162,000	Comm.	99	MOU	2010
	JAM and ACD	S. African, American	Agriculture	24,300	Comm.	32	MOU	2010
	M.A.J. Foundation	Indian	Forestry	8,020	Gov't	32	Last stages	2008

	Madhvani	Nile Trading	CEDASS	CETC	Green Resources	Eyat	JAM & ACD	Blue Lakes	ETC	Comde
Did investor / gov't consult the affected community?	No	No	Yes	Yes	Yes	No	N/A	Yes	Yes	No
Was that consultation done prior to negotiating the agreement?	No	No	Yes	No	Yes	No	N/A	No	No	No
Has the investor / gov't conducted ESIA's?	No	No	No	Yes	No	No	No	Yes	Yes	No
Were the ESIA's done prior to the agreement?	No	No	No	No	No	No	No	No	No	No
Will community members have to be relocated?	Yes	N/A	Yes	Yes	No	Yes	N/A	N/A	Yes	N/A
Does the agreement provide compensation for affected communities?	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

Consultation

- Serious shortcomings in consultation
 - Done as formality after investment agreement finalized
 - Only talk to handful of community leaders
 - No consultation at all
- Even when done, imbalance of power leads to one-sided agreements
- Poor information flow leads to miscommunication and unfulfilled expectations

Case study

- Madhvani Group

- Ugandan conglomerate
- Revitalizing agro-industrial complex for sugar production
- MOU only
- Community living on and around the project area
- On-going border dispute, multiple overlapping conflicts, and high levels of displacement
- No real consultation
- Gov't says it may consult community when they begin planning relocations



- Take-home points

- Gov't claim to land is on tenuous legal footing.
- Investments can both contribute to conflict and indirectly benefit from it.
- Lack of consultation endangers investment sustainability.

Case study

- Green Resources
 - Norwegian company. Forest plantations in Mozambique, Tanzania and Uganda.
 - Pursuing 99-year lease for 179,000 ha.
 - Yearlong consultation process, 3 meetings with community. Extended consultation with steering committee.
 - Poor information flow, community and gov't.
 - Lots of support in community, despite imbalance of benefits (lease amount, length).
- Take-home points
 - Difficulty of operationalizing community land ownership
 - Poor information flow contributes to the problem
 - Community engagement may not be enough

Concluding thoughts

- Investments still in their early stages. No immediacy. This will change once investments become operational.
- Investment may skew post-conflict reconstruction.
- Temporary moratorium advisable, but no political will.
- Need to work on operationalizing community land ownership.
- Real risk that Southern Sudan will repeat the mistakes of other post-independence countries.
- The country is at a crossroads. The path it takes now will determine its trajectory for many years to come.



THE END